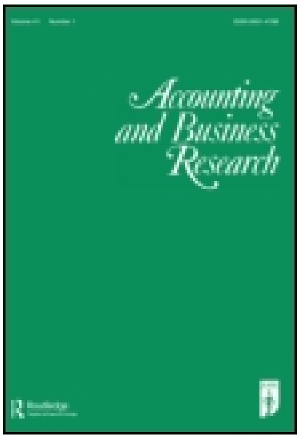

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The political economy of regulation: Does it have any lessons for accounting research?

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The political economy of regulation: does it have any lessons for accounting research?

Michael Moran*

Abstract — The paper argues that regulation is at the heart of markets, and that regulation is itself an inherently political process. It explores how this insight works out by examining a range of real existing national regulatory systems – notably the US, the UK and the European Union. It argues that political jurisdiction matters, because of the influence of institutional structure, political culture and historical trajectory. It suggests that these insights need to be central to accounting research, because at the heart of accounting research lie processes which are critical to the regulation of economic life.

Keywords: regulation; politics; accounting; law; government

1. Politics, economics and regulation

The regulation of economic life is where politics and economics meet; in that simple sense everything to do with regulation concerns political economy. Of course in the academic languages of both political economy and of regulation many meanings and theories jostle for primacy. Indeed, in academic worlds increasingly plagued by over-specialisation both 'political economy' and 'regulation' have emerged as unifying notions: intellectual locations where scholars and practitioners can emerge from different disciplinary silos to talk to each other (Moran, 2002).

A necessarily brief paper is not the place to scan the world of theory in political economy or of regulation (for such a scan see, for example, Eisner et al. 2006). But regulation is at the heart of any relationship between business and the modern state in one obvious sense: in modern capitalist systems the way business engages with markets is conditioned by a state-backed regulatory framework. The most obvious form this takes is a set of rules governing market exchanges – the kind provided by, for instance, the system of commercial law. In this sense regulation of business life is ubiquitous in the modern market economy. And the theory and practice of accounting must lie at the heart of this, for accounting provides the critical social technologies which enable regulation in this broad sense to be conducted in a market economy. 'Regulation' suggests the existence of a distinctive model of business–government relations: distinctive, for instance, from one where the state expects to replace the market economy with some more directive instruments, like public ownership. But it is here that the uncertainties begin. To put it a bit simply: there are two very different sources of our image of regulation, and what it implies for the role of the state in economic life. One is derived from a particular national experience; the other from the perceived experience of the wider economy of advanced capitalism in the last generation.

The single most important national system of capitalist democracy exists in the US. American capitalist democracy has been distinctive not only in its scale and global influence. It has also pioneered a special kind of state–business relationship. That has created an American 'regulatory state' – the most important formation on earth to deserve that title. As we shall see, this American regulatory state has a number of distinctive features: attitude to enterprise ownership; institutional forms; and historical trajectory.

We shall also see that the relationships developed between the regulatory state and business in the US have often been very different from those suggested by the second source of the phrase: those that derive from attempts to summarise what has happened to the relationship between the state and business community in the wider world of advanced capitalism, especially in Europe, over recent decades. This latter image of the regulatory state contrasts it with more interventionist models of economic management – and therefore with more interventionist models of the relationship between the state

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and the business enterprise, and by extension between the state, accountancy and the business enterprise.

One of the quickest ways of appreciating what this latter image is trying to tell us is to reflect for a moment on what lies behind the picture of a 'regulator.' It is a metaphor, and one borrowed from regulation in physical systems. In a physical system – like a steam engine or centrally regulated domestic heating – the regulator is a balancer keeping the system in some pre-determined equilibrium. Applied to economic regulation this suggests that the state is a manager of the market system, but a manager that intervenes only to return it to some point of equilibrium. One of the most graphic images conveying this is provided by the highly influential work of Osborne and Gaebler (1992). They interpret long-term changes in the character of the modern state as involving a shift from 'rowing' to 'steering'. In the former, the state either commanded large scale resources, such as publicly owned industries, and used them to determine social and economic outcomes; or in the American instance which so concerned Osborne and Gaebler, it substituted direct ownership with regulation of a 'command and control' variety, issuing specific regulatory commands backed by the force of law. By contrast, when it chooses to 'steer' rather than 'row' the state is transformed into a kind of social 'pilot', guiding the systems of economy and society. This latter picture assigns the state a relatively subordinate role in its dealings with markets, for it is responding to signals, in the manner of a pilot, from its environment – and in democratic capitalism a dominant part of that environment is made up of the market system.

But here the ambiguities and uncertainties multiply. The image of a 'steering' state is not new, and some versions convey a very different meaning – indeed a sinister, anti-democratic meaning – from that involved in touching the tiller. The first great work of political theory, Plato's *Republic* (circa 400BC) offers an image of authoritarian political leadership in which an elite is pictured precisely in the language of the 'pilot' of society. At the other end of the time span, one of the most brutally authoritarian governing systems of the 20th century, that of Communist China, celebrated the leadership of the 'Great Helmsman', Mao Zedong – one of the most savage tyrants in a century of savage tyrants. Totalitarian steering of the kind practised by the Great Helmsman committed some of the greatest crimes recorded in human history (see Scott, 1998).

The very different meanings conveyed by the phrase 'regulator' suggest that if we want to get an accurate image of what it means in reality, and in particular what it means for the market system, we should not start with theoretical accounts based on images of regulation; we should instead look at some real live states. That is the approach I take here. The most important example of a practising regulatory state, as we have noted, is the US. The very idea of modern market regulation is an American invention; and most of the important institutional innovations, and problems, in business regulation, are American in origin. We shall see that the history of the regulatory state took a fresh turn in Western Europe from the 1980s onwards, both at the level of the European Union (EU) and at the level of some individual member states. That fresh turn is indeed commonly pictured in the language of regulation as pilotage; examining this account is the purpose of the section that follows my account of the US.

2. The American regulatory state: adversarialism, cooperation and capture

The relationship between the American regulatory state and the business enterprise is strikingly distinctive, viewed comparatively.

The simplest, but perhaps the most important, indicator of distinction, is that this is a relationship with deep historical roots. The pre-industrial American economy was one where the state was closely involved directly in the conduct of economic life, for instance in the chartering of corporations. But the relationship with business took a special turn in the closing decades of the 19th century. That special turn was a reaction to a great economic revolution which spanned the generation following the end of the Civil War. This era saw the development for the first time of a significant plutocratic class, immortalised in the idea of the 'robber barons' who emerged in the second half of the 19th century to dominate parts of the newly developing economy: for instance Carnegie in steel, Rockefeller in oil, Vanderbilt in rail (Josephson, 1962). The wealth of this class was fabulous by American historical standards, and the economic and political power that it was able to exercise was correspondingly great: 'During the 1840s there were not twenty millionaires in the entire country; by 1910 there were probably more than twenty millionaires in the United States Senate.' (Hofstadter, 1955–1972: 136).

The change was succeeded, in the last quarter of the 19th century, by an even more profound institutional development: the appearance of a new form of economic organisation – new to American society, but also to the rest of the capitalist world. It consisted of giant corporations which captured markets in whole sectors, and which increasingly developed their own distinctive forms of internal organisation (Lamoreaux, 1985). They were a world away from that of the small farmer or storeowner who was the mythical centre of the traditional American economy. These corporations were soon to pioneer new forms of internal divisional organisation, which gave professional managers, rather than entrepreneurs, a central role (Chandler 1977: 6–12). They were, in Chandler's arresting phrase, a 'visible hand', which displaced much of the 'invisible' hand of the market. The rise of these new giants was also associated with the emergence of new centres of financial power, publicly often demonised as the 'Money Trust' allegedly organised on Wall Street (Carosso, 1973).

These great changes had political origins, and they had political consequences. The rise of the new giant corporations was not the result of some process of natural economic evolution; it reflected the exploitation of the political environment by creative entrepreneurs (Roy, 1997: 10-–20). They turned the American state in a distinctive direction and may be said to have been the unintended progenitors of the American regulatory state – unintended because it was in response to the rise of the great new centres of business power that the clamour for regulation originated. The period was one of extraordinary social and economic change – and of corresponding stress, notably for the 'old' economy and society of rural America, as it felt the impact of the new economic power and the new economic challenges. The most important political manifestation of this was Populism, a great movement of agrarian radicalism that reached its height in the 1890s. It arose out of the stresses and problems imposed on small business rural America by the momentous changes of the second half of the century, and was a reaction against the figures and institutions that seemed to be behind, and to benefit from, those changes: the new plutocracy represented in the public mind by the 'Robber Barons'; the giant corporations that seemed to be able to control, rather than be controlled by, markets; the new centres of finance, and their perceived ability to control the terms on which small entrepreneurs could get credit. The ensuing crisis of legitimacy for big business was expressed in the view that, in place of small enterprises with a human face and spirit, there had been created corporations without a 'soul' (Marchand, 1998).

The single most important result of this hostility was the passage of the Sherman Act in 1890. This law was prompted by the furious debates over the alleged power of the trusts. It is agreed by scholars that the Act was aimed at the capacity of the new corporations to manipulate market competition, but critical interpretations have subsequently stressed the limited impact of the Act and its symbolic rather than substantive role. Critics of its effectiveness point to the extent to which the original proposals were shorn of sanctions during passage through Congress, and the extent to which later court interpretations created a jurisprudence which minimised the impact of the law on corporate combinations (Bowman, 1996: 63–69). The Act nevertheless has claims to be the founding measure for a federal regulatory state aimed at controlling corporate power. But it did not develop in isolation. It is a touchstone because it accompanied other events in the birth of the American regulatory state. To this period, thus, also belongs the creation of the Interstate Commerce Commission (1887–1995) from which we can date one of the characteristic forms of business regulation for the next century – rate and service regulation, which extended over time into industries created by new technologies, like airlines and telephones (Stone, 1991). Likewise, the passage of the *Food and Drugs Act* 1906 inaugurated a key, and enduring, history of federal regulation of both the food and pharmaceutical industries, leading to the establishment of a major regulatory agency, the Food and Drug Administration (Hilts, 2003).

These are important episodes because they resonate through the political history of the regulation of business in America. Movements critical of the exercise of American business power have deep historical roots. There exists a strong and long established tradition of highly adversarial criticism of business institutions. This tradition exists in spite of, or perhaps even because of, the absence of the kind of root and branch opposition to capitalism represented by socialist movements in Europe, and in spite of the weakness of any American tradition of direct ownership of productive resources by the state.

The Great Crash of 1929 and the ensuing Great Depression reignited this tradition of suspicion of big business, and especially of big business identified with the 'money trusts' of Wall Street. This was an era of financial catastrophe, revelations of fraud, the collapse of production, and mass unemployment. Out of this came the 'New Deal', shorthand for a series of social and economic reforms introduced under the Presidency of Roosevelt. The 'New Deal' is a powerful symbol for a new relationship between government, business and society, and a key development in the American regulatory state – but the meaning of that symbol, we shall see, continues to be contested.

The New Deal built on the foundations of populism to create some of the key institutions of a regulatory state, and thus of a distinctively American way of ordering the relations between government and business. The heart of this new regulatory state was a series of Federal regulatory agencies. The most important of these were concentrated on financial markets and institutions: for instance, the Securities and Exchange Commission regulated stock markets; the Federal Deposit Insurance Corporation safeguarded small deposits in banks and, as a corollary, regulated the prudential conduct of those banks (Moran 1984, 1991).

The New Deal also established a highly distinctive mode of regulation that has ever since deeply shaped the relations between business, the state and the wider political system. The most important feature of this mode is the dominance of the law and of legal argument. Formed by statute, in a culture where law was already central to the regulation of social relationships, the regulatory process soon became heavily shaped by the courts and by legal argument. Lawyers emerged as the key figures in negotiating the relationship between the new regulatory state and American business, both in the regulated enterprises and in the regulatory institutions. The law schools of the universities became important providers of skilled professionals for this new regulatory state (McCraw, 1984: 243–244). We will later see one key consequence: the importation into the regulation of business of a distinctive feature of American legal culture – its reliance on adversarial argument between opposing parties as a means of determining outcomes.

The creation of new regulatory bodies and new, legally informed ways of thinking about business policy can be thought of as involving the imposition of constraints on business institutions – a common perception among critics of the New Deal in the business community. But this was not the whole story. Another feature of the regulatory state that the New Deal created reminds us that business institutions in the US, whatever popular hostility they aroused, still entered the New Deal with formidable power resources. The most important resource was ideological: attachment to the market order still dominated the minds of most Americans (Galambos, 1975). The aim of the New Deal was to stabilise, not replace, the business order (Foley, 2007: 279). The institutional structure, and the actual practices of the new regulatory bodies, ensured that there was a great deal of cooperative regulation with business, market actors being encouraged to take responsibility for running their own regulatory affairs. A good example of the style of the new regulatory state is provided by the single most important agency established by the New Deal, the Securities and Exchange Commission. The Commission was designed to regulate the institution – stock exchanges – that had been at the heart of the scandalous collapses in 1929. But from the start the leadership of the Commission was drawn from the very markets where scandal had originated: its first chairman, Joseph Kennedy, founded the fortune of the Kennedy political dynasty by financial speculation in the 1920s. More important still, the Commission worked through a kind of 'franchising' system: it delegated responsibility for regulation to the stock exchanges themselves, mostly restricting itself to authorising and supervising these self-regulatory bodies (Seligman, 1982: 103–123).

In short, there is a contradictory history to the American regulatory state: a contradiction between a cooperative regulatory mode and a culture of adversarial suspicion. We can see the two at work in the great turn taken by regulation from the 1960s. This was the era when the interest of the regulatory state expanded to what is generally called the new 'social' regulation: control of the environmental consequences of firm activity; control of health and safety in the workplace; control over (discriminatory) hiring and employment practices.

The new age of social regulation prompted an intensification of a key trait in the American system of business regulation: a further marked turn to the law, and indeed to a particularly adversarial form of law (Stewart, 1988). Analysts like Vogel have established that, viewed comparatively, American regulation has long been more legalistic and punitive than regulation in most other large capitalist economies (Vogel, 1978, 1986, 1989, 1996). But the advent of the new social regulation heightened these features. It strengthened a culture of what Kagan (2001 and 2007) calls 'adversarial legalism', the key features of which were a willingness to impose (often draconian) penalties on enterprises for breaches of regulations, and a readiness both on the part of the regulated and the regulators to resort to adversarial confrontation in courts to settle disputes. This readiness in turn reflects a wider culture of litigation, and the fact that, increasingly, institutions and groups not directly party to the regulatory process have shown a readiness to try to intervene by invoking law.

The contradictory inheritance continues to shape the politics of the relationship between business and the American regulatory state. The corporation is confronted by a two-headed beast: one with a smiling face, the other snarling at business. In recent decades – since the Reagan revolution of the 1980s – these contradictory aspects of the state have struggled for supremacy.

Business influence over regulation has been strengthened by a number of developments, notably by a paradigm shift within the intellectual world of the regulators themselves, and by a shift in the priorities of politicians. There has occurred a change in the balance of analytical skills represented in the agencies, and a change in perceptions of the character of the regulatory task. As we saw earlier, the great age of the institutionalisation of the regulatory state was also the age of legal dominance over the regulatory process. But since the 1980s lawyers have been joined, and to some degree supplanted, by economists, and this has coincided with a shift in the way regulatory intervention is defended: justification is increasingly done in the language of micro-economic impact analysis (Eisner et al., 2006: 59–60). A pioneer in this change was the great economist (and deregulator of airlines) Alfred Kahn, who liked to quip that for him aeroplanes were just 'marginal costs with wings' (McCraw, 1984: 224).

This intellectual change has accompanied a growing lack of confidence in 'command and control regulation': that system which relies on the enforcement of regulation by issuing commands down a legally backed hierarchy. The rise of economists and economics helped legitimise the deregulation movement, which produced liberalising reforms in industries, like telecommunications, airlines and financial services. It also encouraged experiments with 'soft' regulation: these include the attempt to use market style mechanisms (such as licensing systems allowing the purchase of 'pollution permits' in environmental regulation). There developed a conviction that some areas of regulation were so technically complex that 'command and control' was too blunt an instrument, thus prompting experiments in the delegation of regulatory authority to affected industries and enterprises, subject only to the achievement of broadly prescribed standards (Eisner et al., 2006; Eisner, 2007).

These paradigm shifts can call on that tradition in the American regulatory state which approved of close business involvement in self-policing. But they were reinforced by the wider ideological shifts of recent decades. Although these date mostly from the 'Reagan revolution', some of their origins lie in the 1970s: the landmark deregulation of airlines, and of financial services, for instance, was well under way by the time that decade ended. But the Reagan Presidency nevertheless marked a distinct change in the climate created by partisan politicians (Eisner et al., 2006). Every President since Reagan has, at some period of office, announced a temporary standstill on the making of regulations, usually expressed in the language of relieving the 'burden' of regulation on business. And even the one President who publicly presented himself partly as an opponent of the Reaganite tradition – Clinton – also publicly endorsed Osborne and Gaebler's theory of a shift towards a 'steering' government; indeed it is the appropriation of Osborne and Gaebler's language of 'reinventing government' by the Clinton Administration which made their work so well known and so influential. Every President since the start of the 1980s has talked the language of the 'burden' of regulation on business, of deregulation, and of 'soft' regulatory initiatives.

This is the aspect of the American regulatory state which has looked with a benign gaze on business in recent decades. But the other, snarling, face has also been in evidence. There is still life in the adversarial tradition, a tradition that is in part the product of the old populist suspicion of big business, and in part the product of the adversarial legal culture. Studies of American public opinion show a deep-rooted suspicion of big business, alongside an equally deep-rooted tendency to mythologise the virtues of small business (Vogel, 1996; Dennis, 2004). And for all the experiments with 'soft' law, the revolution in regulation signalled by the advent of the new social regulation in the 1960s produced an irreversible juridification of the regulatory process, which has permanently exposed business to adversarial, punitive enforcement. Kagan and Axelrad's comparative study of regulatory enforcement paints a consistent picture of American distinctiveness: of a greater willingness to confront and to punish the corporation in the US by comparison with experience in other leading capitalist democracies (Kagan and Axelrad, 2000).

This exposure to the peculiarities of American legalism has taken a form which has been hugely damaging to the business enterprise. American liability law is distinctive in its expansive interpretation of liability for damages, and the result has been to expose enterprises to highly expensive lawsuits: the targets have been as diverse as asbestos and tobacco (Sicilia, 2004). In a legal culture, which is not only adversarial but also fiercely competitive, the potential rewards of successful cases have also stimulated the development of a highly aggressive branch of the legal services industry. Lawyers have invested some of their gains in one area (for instance asbestos) to fund cases in others (for instance tobacco). They have also used their wealth to fund, and try to influence, the competitive electoral system in order to defend the jurisprudential assumptions which support this thriving industry (Derthick, 2005).

The continuing reality of adversarial implementation, combined with a vigorous, threatening industry staffed by liability lawyers shows that, whatever the rhetoric of democratic politicians or academic theorists, the practical implementation of regulation is often anything but business friendly in the American regulatory state. One important reason the actual record of successive Presidents does not match their deregulatory rhetoric is that there are powerful wider social forces driving continual regulatory intervention in the affairs of the enterprise. The most immediate manifestation is the way scandal functions as a driver of regulatory change. One of the most striking examples will be very familiar to accounting researchers and practitioners: the experience of financial regulation, notably of accounting and audit, in recent years. In the Sarbanes-Oxley Act of 2002 Congress transformed what had been a settled domain of self-regulation dominated by the industry into virtually a paradigm of traditional, adversarial command and control regulation. The moving force behind this was a series of financial scandals and collapses, of which the best known was the Enron Corporation. But 'best known' is the appropriate phrase here. Business operates under the scrutiny of a highly competitive (and therefore aggressive) media system, which is constantly searching for scandals to discover and expose (Berry, 1999: 120–130); and under a highly competitive political system in which legislators are constantly searching for scandalous regulatory failures to remedy. In other words, there are important features inscribed in the very character of the American regulatory state which are pushing it in the direction of deeper and wider controls over business, even as politicians and regulators talk the language of deregulation and light touch control.

The briefest characterisation that we can offer of the American regulatory state is also the most obvious. It is *American:* that is, it can only be understood as a manifestation of very special American historical development, institutional innovation and cultural patterning. Is the same true of our second great example?

3. The European regulatory state: coping with economic crisis and democratic politics

I have given time and space to the US in part because the experience of business with the American regulatory state provides a kind of informal 'benchmark' against which we can try to understand the European regulatory state – a formation that has its origins in the political economy of the 1970s. By that time, as we have seen, the American regulatory state had a number of well-established features. It had developed out of a long series of crises dating back over a century. It was marked by the linked traits inscribed in American political culture and American legal culture: that is, it was enmeshed in the institutions of democratic politics and it was commonly characterised in its enforcement practices by adversarial legalism. It thus presented two faces to business: a benign face which represented deregulation, liberalisation, an emphasis on consultation with business, and light touch implementation; and a hostile face which represented the long history of suspicion of big business and a determination to settle economic disputes by adversarial challenge in the courts.

The most influential account of the rise of the regulatory state in Europe, that offered by Majone (1991, 1996 and 1999), begins by invoking some of these American parallels, but we can see immediately that the American example is ambiguous: it leaves unsettled the question of whether a regulatory state is business friendly or business hostile. The most obvious sense in which Majone's model is American is that it is consciously Madisonian. That is, it draws on the tradition of constitutional argument in the US which derives from the contribution of James Madison, one of the key figures in the debates that surrounded institution building in the early American Republic – and who argued for institutional designs that would insulate government from popular pressures. It suggests that the regulatory state is a necessary response to the complexities of economic government in capitalist democracy, and thus a necessary alternative to majoritarian models of democratic decision-making. As an alternative it offers insulation from majoritarian democracy – hence the Madisonian inspiration. Since the regulatory state is pictured as a functional response to high complexity in economic government, an obvious question is: why did it only develop in Europe after the 1970s? Complexity of this kind under capitalist democracy is, after all, hardly something new. Two novel conditions in the 1970s help explain the change. Both created a problem in relations between the EU and the business system. The first sprang from the limits to state building in the new system of economic government being constructed in the European Economic Community (now the EU). On Majone's account the central governing institutions of this new system of economic government – notably its key executive agency, the European Commission – have been forced to depart from the command modes of control so common in the member states because of the character of the new 'state': in particular, it lacks the fiscal resources and – partly as a result – the resources in skilled personnel directly to exercise control. It has thus been forced to appropriate the doctrine of subsidiarity, under which responsibility is delegated to lower levels and, in part as a result, the policies which are be implemented have to be worked out in consultation with the affected parties. As far as business is concerned, this means that it can expect to be closely involved in policy formulation, and to have a big say over policy implementation. The future in such a state seems to lie with business self-regulation. This expectation is reinforced by the second condition identified by Majone as a prompter of the rise of the regulatory state: the problems of the Keynesian economic order following the end of the 'long boom' in the advanced capitalist nations in the early 1970s. The exhaustion of Keynesianism also signalled the exhaustion of an age of direct, large-scale state intervention in economic life, and a turn to regulation in the 'steering' sense identified at the beginning of this paper.

These twin conditions – the turn to indirect modes of government via the doctrine of subsidiarity and the turn away from Keynesianism – combine to produce an (embryonic) European regulatory state: a mode of economic government which is 'regulatory' in the twin sense that it relies on the promulgation of rules which are implemented elsewhere, and in the sense that it conceives the tasks of economic government as balancing and steering rather than direct control. Out of these twin forces come a European regulatory state that practises economic government by establishing broad rules (like Directives) in consultation with affected interests; these interests are then heavily involved in shaping the transposition of those rules into practical measures within individual national economies, individual sectors and even individual enterprises.

It will be clear that this is a 'business friendly' system of economic government, at least in intent. And it has another intended feature, which is designed to make it more business friendly still. We recall that the institutions and arenas of regulation in the US were heavily 'politicised': that is, infused with the influences of democratic accountability and partisan political argument. Because they are faced with a powerful Congress intent on oversight, agencies are constantly exposed to the influences of majoritarian democracy. The regulatory state movement in Europe, both at the level of the EU and, as we shall see, at the level of important member states, has been driven by a very different force: the desire to 'depoliticise' – which is to say, to take out of the partisan democratic arena issues formerly subject to democratic argument and to replace them with agencies that are insulated from the pressures of majoritarian democracy. The most important sign of this is the development documented by Coen and by Thatcher: the spread of 'non-majoritarian' regulatory agencies across the EU, both in its most important member states and at the level of the EU itself (Coen and Thatcher, 2008; Thatcher 2002a, 2002b, 2005, 2007). As far as the EU is concerned, the most important creation is the European Central Bank (ECB), an agency with an increasingly elaborate and wide mandate which controls a decision – determination of short-term interest rates – formerly widely dispersed, and commonly controlled by democratically elected politicians. What is more, it is an agency whose mandate has been shaped by pro-business ideologies, notably the object of controlling inflation and advancing 'sound money' doctrines. This development exactly fits the pattern of what Majone calls Madisonian democracy – an emphasis on the technocratic settlement of policy problems through a process of adjustment between the affected interests.

Viewed in these terms, the European regulatory state looks a much more unambiguously business friendly political formation than does its American counterpart. What is more a number of contingent features support this picture. In its search for partners in regulation the Commission has a well-documented history of seeking to involve business interests, notably the largest enterprises (Coen, 1998 and 2007). In addition, the lobbying worlds which surround the making of regulatory policy at EU level are populated by a well-organised industry where some of the best-resourced actors are business institutions. Moreover, when we look at the European regulatory state in American terms one key feature is missing: with the exception of the ECB, it is hard to identify European regulatory agencies with anything like the clout, resources or status that characterise the institutional giants of American federal regulation. The complex systems of 'double delegation' (Coen and Thatcher, 2008) practised in the EU mean that even when agencies are created they are typically mired in complexities of multi-level governance. An instance is provided by the example of the European Chemicals Agency, created in 2007 to register and evaluate chemicals across the EU – a vital matter (European Chemicals Agency, 2008). Most of the detailed work of the Agency is actually delegated to individual member states, while key parts of the industry – such as the production of pesticides – are regulated under an entirely different regime. In short, the institution which has given the American regulatory state 'bite' in its dealing with business, the public regulatory agency, is a much more enfeebled animal in the European case. Moreover, Coen and Thatcher's study (2008) of the creation of EU-wide networks of regulators – a second best solution to the problem of developing some EU-wide regulatory capacity - suggests that these networks are of very limited use; they are certainly no substitute for the institutional giants of American regulation.

But this summary judgment that the European regulatory state is business friendly is complicated by two developments, one at the level of the EU itself, and one in an important member state.

As far as the EU is concerned, whatever the rhetoric, it is not plain that the practice of EU shaped regulation is indeed light touch. Much depends on the perspective of the affected interest. The diversity and complexity of business interests across the EU – divided by sector, by size and by national regulatory traditions – means that the impact of regulatory intervention will be felt very differently by different groups. From the point of view of business regulatory systems that were historically weighted towards voluntary self-regulation, such as those of the UK or Ireland, many regulatory interventions – in areas as disparate as the regulation of product packaging and labelling, and the regulation of workplace safety – have been experienced as the creation of quite prescriptive systems of rules. More important still, the impact of the single most important regulatory agency created by the EU, the ECB, has had complex and highly varying effects on business interests in different sectors. This is hardly a surprise because the Bank is trying to operate a single interest rate rule across a hugely diverse set of capitalist economies: consider the impact of a single interest rate regime on business communities as diverse in their market position, form of organisation and cultural understandings as those of Germany, Spain and the Republic of Ireland. Only by construing business 'interests' at an almost metaphysical level of abstraction could the operations of the EU's interest rate regime be identified as unambiguously 'business friendly'. The developing institutional capacity and ambitions of the ECB are also changing its relations with business interests. The Bank has rapidly developed as an institution with its own highly distinctive organisational culture: it is a major promoter and shaper of banking systems, notably in the new accession states of the EU, and is also a rapidly developing centre of expertise about both monetary policy and banking supervision and regulation (Moran and Macartney, 2009). In short, it is in many instances superordinate, rather than subordinate, in its dealings with key banking interests; indeed, in respect of the rebuilt private enterprise banking systems of the former Communist autocracies it has been critical in the very construction of business interests (Johnson, 2006).

This tendency for regulatory agencies to develop distinctive institutional cultures and powerful resources of expertise and information, independent of regulated interests, and often capable of imposing their will on those interests, is a well documented feature of the American regulatory state. It is connected to another feature also well documented in regulatory systems: the importance of struggles for 'turf' and influence in the systems of bureaucratic politics that are the natural by-product of the regulatory state. The process is well illustrated by the case of competition regulation in the EU, a critical part of the EU's area of competency in economic government. Wilks has called DG IV (the name of the competent DG at the time) the most powerful agency for the regulation of competition on earth (Wilks, 1999; and see also Wilks 2005; Wilks and McGowan 1996; Wilks and Bartle 2002). Under a succession of Commissioners it has also turned into one of the most abrasive, quite matching American regulators in its enforcement style. It has been involved in a series of high profile confrontations with large firms, both European and American; it has, American fashion, used its powers to raid the offices of firms (in the search for evidence of collusion); and it has used its power to impose huge fines on large American and European multinationals, perhaps the most notable example being provided by its protracted battle with Microsoft.

The second major complication produced by the 'business friendly' image of the European regulatory state is provided by the case of one member state, the UK. The UK is critical to understanding the European regulatory state in part because Britain is a major national economy, and the most important financial centre in the EU. But it also has a more analytical importance, because in the UK we have seen, in recent decades, the most ambitious attempt by any leading capitalist democracy to construct a new regulatory order. The relationship of business to this new regulatory order is puzzling and ambiguous. The puzzle may be stated as follows. On the one hand, the British regulatory state exactly follows the kind of path we might have expected had we followed Majone's reasoning. After the end of the long boom in the 1970s the British economy, and the British system of economic government, entered a protracted crisis – in many ways the most serious crisis of any advanced capitalist economy. That was succeeded in the 1980s, under the premiership of Margaret Thatcher, by the implementation of some of the most radical reforms in the advanced capitalist world. The state attempted to withdraw from the direct control of large areas of economic life. The big symbols of that were the partial disavowal of Keynesian theories of active management of the macro economy, and the programme of privatisation of publicly owned enterprises – the most ambitious programme of privatisation in any large capitalist economy. The state also attempted to remove many restrictive practices in the economy. The most important examples were in labour markets and in financial markets – the latter symbolised by the 'Big Bang' on the London Stock Exchange, which dismantled barriers to market entry and to price competition. The state also moved in the direction of relying heavily on reformed, or newly created, regulatory agencies to manage economic life. These agencies were constructed so as to ensure that areas of economic life that had hitherto been heavily politicised (that is, under the influence of democratic, partisan politics) were now to be run in a 'depoliticised' fashion. The two most striking examples of this were: the gradual depoliticisation of monetary policy, culminating in 1997 in the transfer of responsibility for setting short-term interest rates to an independent Monetary Policy Committee of the Bank of England; and the creation of a network of regulatory agencies to manage the newly privatised industries. This latter innovation – the creation of free-standing regulatory agencies – was soon extended to other parts of business regulation, either by the reform and integration of existing bodies (the experience of environmental policy) or by the creation of new free-standing institutions (the experience in broadcasting).

But if business believed that in the process it was getting a more compliant state, the experience of the two decades or so of the British regulatory state will have disabused it of that illusion. The turn to regulation in practice created new and formidable instruments of state control. There are four main reasons for this unpleasant outcome – unpleasant at least as far as business is concerned.

The first is that in key areas of economic life, of which the financial markets are the most important, the new agencies of regulation replaced systems of self-regulation that had been under the control of the actors in the marketplace. What is more, by replacing an informal, and often secretive, system by openly organised and explicitly empowered public bodies, the reforms forced into the public domain issues that could once be settled tacitly. The shift to statutory-based regulation also made the system look much more 'American' in one other key respect: it made the courts and the law important in the implementation of regulation.

Second, whatever the ambitions of the creators, it has proved impossible to 'depoliticise' the new systems of regulation. The history of the regulation of privatised industries is a particularly instructive example. The original theorists of regulation thought of it as a transitional arrangement, which would be succeeded by a 'withering away of regulation' as market forces asserted themselves. In truth, regulation of privatisation has become more complex, more detailed and more entrenched. What is more, a whole set of public policy issues – to do with the appropriate levels of enterprise profit, and executive reward – have proved impossible to keep from the democratic public arena (for details, Moran, 2007: 95–123). The great crisis of 2007–2008 only intensified this process of politicisation.

Third, this process of politicising regulation has proved impossible to contain; it has spilled over into hitherto 'depoliticised' domains in an often uncontrollable fashion. In whole areas of company law and company regulation recent decades have been an age of turmoil, of constant changes of rules and of the intervention of democratic politicians into arenas like corporate governance. Of course, business has fought back, and often fought back successfully; the fabulous enrichment of the corporate elite in recent decades shows that the most powerful have often been able to resist the complaints of democratic politics. But they have had to do precisely that: argue and resist, in fields that were once the domain of uncontested, silent acquiescence.

Fourth, and finally, the relationship between many of the new agencies and business has proved anything but easy, for at least some of the agencies have been far from business compliant. This is most evident in the field of the regulation of competition, maybe the single most important domain of regulation, especially for the large enterprise, The history of the regulation of competition for about

50 years after the Second World War was dominated by the Monopolies and Mergers Commission, which, as Wilks' (1999) history shows, was essentially a business-friendly institution that expected to regulate in a cooperative fashion, especially in cooperation with the biggest firms. The successor institutions operate under very different mandates and with very different institutional cultures. They have been involved in a number of high profile clashes with individual enterprises, often working in concert with Brussels regulators; these clashes show that the largest enterprises now have to operate in a very different way from the cooperative world of the old Monopolies and Mergers Commission.

The regulatory state in Europe does not quite match the extremes of smiling and snarling that we saw in the case of its American relative; nevertheless, as far as business is concerned it is a complex and moody animal to deal with.

4. Regulation, accounting and national regulatory cultures

My argument in this paper is simplicity itself: regulation of any domain of economic life is a political affair. And since it is a political affair at its heart lies a set of relationships between business interests and the state. Disentangling those relationships – making sense of that grand phrase 'the political economy of regulation' – involves close attention to territorial patterns of regulation, since states inhabit a world of territory. Making sense of the political economy of regulation involves making sense of national patterns of regulation. And it is here that the implications for practice and research in accounting begin to become clear. The formal language of accounting in principle offers a politically neutral set of social technologies for the practice of regulation in key areas of business life in the market economy. But what I have sought to show here is that the application of these social technologies is inevitably a political matter, and is therefore shaped by the political setting – institutional and cultural – in which it operates. Accounting practice is a critical arena where politics and economics meet – and is therefore critical to the political economy of the market system.

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